



and County Superintendents do not have jurisdiction to order school districts to implement Section 504 remedies.

To avoid unnecessary expenditure of time and money, this appeal is dismissed without motion. The County Superintendent's Order and further proceedings are stayed pending utilization of the Section 504 procedures available under federal law. If a "matter of controversy," as that term is used in § 20-3-210, MCA, remains after resolution of the Section 504 issue, either party may proceed with an appeal within 30 days. The State superintendent's authority to dismiss this appeal without motion is based on § 20-3-107 (3) and ARM 10.6.122.

#### Memorandum **Opinion**

A. Basis for concluding the County Superintendent lacks Section 504 jurisdiction.

Section 504 is a federal law requiring school districts that receive federal financial assistance to provide reasonable accommodations to students with disabilities. It is implemented with federal regulations found at 34 CFR 104. School districts are required to identify, evaluate, and appropriately educate students with disabilities. 34 CFR 104.36 requires school districts to establish procedural safeguards to achieve compliance with Section 504, including the right to an impartial hearing when necessary.

State law specifically excludes County Superintendents from hearing Section 504 matters. Section 20-3-211(4), MCA, states:

A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

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- (4) the controversy involves the education or possible identification of a child with disabilities.

County Superintendents do not have jurisdiction to make Section 504 decisions and this Superintendent does not have jurisdiction to review them. The United States Department of Education, Office for Civil Rights (OCR), is responsible for assuring district compliance with Section 504.

B. Section 504.

Trustees' decisions on the enforcement of an attendance policy for a particular student can be appealed to a county superintendent under § 20-3-210. If there is a question of Section 504 accommodations, however, that must be resolved before the Trustees can decide the attendance policy issue. A district does not have to follow IDEA procedures to comply with Section 504, but compliance with IDEA procedures establishes compliance with Section 504 procedural requirements.

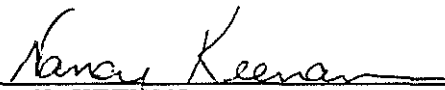
Section 504 requires districts to have procedures to identify, evaluate, and accommodate students with physical or mental impairment that substantially limit educational opportunity. If a district or parent suspects a disability exists, a multi-discipline team with knowledge of the particular student should determine if he or she has a disability that limits educational performance and, if so, what accommodations are reasonable. Some caution should be used in waiving attendance as the accommodation for a student with absences due

to illness. Waiving attendance may be the appropriate in some instances but if a student is unable to attend school, special tutoring or home bound education may be needed.

Review of those accommodations, if necessary, goes to an impartial hearings examiner, not the Trustees or the County Superintendent. Trustee decisions enforcing a district attendance policy for a student with illness related absences should not occur until Section 504 procedures are completed.

Dismissal of this appeal does not mean ML is, or is not, entitled to Section 504 accommodation nor is it an indication of what accommodation is reasonable. Those determinations have to be made by the District and ML's parents, with the opportunity for review by an impartial hearings officer.

DATED this 25 day of March, 1996.

  
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NANCY KEENAN

JEFFERS0.262

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on this 25<sup>th</sup> day of March, 1996,  
a true and exact copy of the foregoing ORDER was mailed, postage  
prepaid, to the following:

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